

Koch, Kristine

From: Yamamoto, Deb
Sent: Thursday, August 28, 2014 5:29 PM
To: Hamilton, Jessica
Cc: Cora, Lori; Cohen, Lori
Subject: RE: Response to the Background Issue Raised During the EPA/LWG Senior Managers Call

Jessica,

It was good to talk with you today. And I appreciate your acknowledgement that EPA didn't direct the LWG to go to dispute and that it was the LWG's choice to do so. I believe it was important to raise this with you so there are no misunderstandings as to the choices available to the LWG on this issue.

Also, the agreement to allow the LWG to dispute the background language in Section 7 after the RI Process Agreement and the AOC timeframe for such disputes due to the LWG's misunderstanding of Section 7 is a deviation from the RI Process Agreement and applies only to the background outlier issue in Section 7. Any future disputes on the RI should be raised in a timely manner as identified in the RI process agreement.

As I also mentioned to you today, I believe there will be impacts to the schedule for finalizing both the RI and the FS given the number and scope of the arguments the LWG has made in its dispute statement. I think it would make sense for EPA to have a call with you and other senior managers within the next week if possible to make sure you are aware of the schedule implications. I will work with Lori Cohen when she returns on September 2, 2014 to schedule a time to talk.

Thanks,

Deb

From: Hamilton, Jessica [mailto:Jessica.Hamilton@portofportland.com]
Sent: Thursday, August 28, 2014 4:54 PM
To: Yamamoto, Deb
Cc: margaret.kirkpatrick@nwnatural.com; Koch, Kristine; Cora, Lori; Cohen, Lori; rjw@nwnatural.com; Jim McKenna (jim.mckenna@verdantllc.com)
Subject: Re: Response to the Background Issue Raised During the EPA/LWG Senior Managers Call

Deb, thank you for your time this afternoon. I really appreciate it. I went back and looked at my original email to you below and I see that I was not very careful when I said that you directed us to initiate dispute now. You did not direct us to initiate dispute; in fact your email is clear that the LWG may initiate dispute now, if we so choose. I can understand why you would be upset by my misinterpretation of what you were actually saying as a direction to dispute and I apologize.

Thanks and I hope you have a terrific, sunny long weekend!

Jessica

Sent from my iPhone

On Aug 27, 2014, at 11:09 AM, "Hamilton, Jessica" <Jessica.Hamilton@portofportland.com> wrote:

Hi Deb: Margaret is out of town, but I wanted to make sure we were able to clarify one issue with you to make sure that the LWG and EPA have a shared understanding.

We received your email dated August 12, 2014 directing the LWG to initiate dispute resolution on background issues in section 7 of the RI on or before August 26, 2014, and we have done so.

As we understand your August 12 email, the direction to initiate this dispute now, arose out of a specific misunderstanding regarding section 7 and does not otherwise alter the terms of the September 24, 2013 RI Process Agreement. Please confirm that this is EPA's intention as well.

Thanks. Jessica

Jessica Hamilton
Port of Portland
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From: Yamamoto, Deb [<mailto:Yamamoto.Deb@epa.gov>]
Sent: Tuesday, August 12, 2014 3:08 PM
To: Kirkpatrick, Margaret
Cc: Koch, Kristine; Cora, Lori; Cohen, Lori; Wyatt, Robert; jim.mckenna@verdantllc.com
Subject: Response to the Background Issue Raised During the EPA/LWG Senior Managers Call

Hi Margaret,

During the call with you and other LWG senior managers on Thursday, August 7, LWG senior managers raised concerns with the final version of Section 7 of the RI on background. This is the version that, as of December 13, 2013, EPA and the LWG had reached agreement on the final revisions. The purpose of this email is to respond to the LWG concerns that it wasn't clear that outliers were excluded from the background data set and the LWG was surprised to know this. The LWG wanted to know where it was specifically stated in Section 7 that outliers were "out."

In light of the LWG's concern that Section 7 was not clear that outliers were taken out, Lori Cohen and I agreed that I would review Section 7 (again), and if it was not perfectly clear that outliers were excluded from the background data set, then I would include language to make it clear.

I have finished rereading Section 7 and have concluded that:

1. It is a well written and clear discussion on what data was used to determine background,
2. It provides a logical discussion of the approach EPA used to analyze the data (following EPA guidance) and determine which samples might be considered outliers, and
3. It identifies the samples that are considered outliers and states that these samples are excluded from the background data set. The excluded outliers are discussed in Sections 7.3.1 – 7.3.15.

Although I believe Section 7 is quite clear, I added a sentence at the end of Section 7.3 to further clarify the handling of outliers. Also, I saw a very minor issue in Section 7.0 where it says there are background data sets (see the second paragraph of Section 7.0) versus one data set that is mentioned in Section 7.2. I believe that could be further clarified. To be clear, several data sets were used to establish background. From those sets we identify the data we used for our background calculations. I asked Kristine Koch to make some minor changes related to providing clarity on this issue as well. All the changes are noted in red in the attached document.

Per our discussion on Thursday, given EPA has made further modifications to this section of the RI (albeit very minor and all consistent with the revisions made to Section 7), we are allowing the LWG to look at the proposed revisions and decide if they agree with them. Even though the time to dispute Section 7 has passed both under the RI review process and RI/FS AOC, EPA agrees that the LWG may initiate a formal dispute over the background issue now if they so choose. Given that this issue has been the topic of significant informal dispute discussions at both the Project Manager and the Senior Manager levels, the informal dispute process has been exhausted per the RI revision process. Any dispute the LWG wishes to raise on the background issue in Section 7 needs to be raised within fourteen days of receipt of this email and minor revisions to Chapter 7 to the ECL Office Director in accordance with the process contained in the RI/FS AOC.

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